

Introduced by Senator CoxFebruary 10, 2005

An act to amend Section 769 of the Insurance Code, relating to insurance agents and brokers.

LEGISLATIVE COUNSEL'S DIGEST

SB 205, as introduced, Cox. Insurance brokers and agents: contracts.

Existing law generally regulates the termination or amendment of a written agency or brokerage contract, where the broker-agent represents the insurer, that has been in effect for at least one year, including providing for specified compensation to be paid to the broker-agent and the renewal of certain insurance policies. Existing law provides that no insurer shall be required to renew any policy of insurance or compensate a terminated broker-agent pursuant to these provisions if the broker-agent, upon failure to remit funds within the time limits set forth in the agency or brokerage contract, has failed within 10 days after written demand to remit funds owed to the insurer.

This bill would increase that period to 20 days.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 769 of the Insurance Code is amended
- 2 to read:
- 3 769. (a) After a written agency or written brokerage contract,
- 4 where the broker-agent represents the insurer, has been in effect
- 5 for at least one year, it shall not be terminated or amended by an

insurer, except by mutual agreement, unless 120 days' advance written notice has been given by the insurer to the broker-agent.

(b) The advance notice required by this section does not apply if the broker-agent has done any of the following:

(1) Exceeded his or her binding authority under the agency or brokerage contract.

(2) Violated the written underwriting rules or regulations of the insurer, a copy of which has been provided to the broker-agent, which misleads the insurer concerning the nature or extent of a risk.

(3) Failed to comply with the fiduciary requirements set forth in Section 1733, 1734, 1734.5, or 1735.

(4) Failed, either within 10 days after written notice upon failure to remit funds within the time limits set forth in the agency or brokerage contract or within 30 days after written demand if the agency or brokerage contract does not set forth time limits, to remit funds due and owing to the insurer.

(5) Had his or her license suspended or revoked by the commissioner.

(6) Engaged in fraudulent acts affecting his or her relationship with the insurer or its insureds.

(7) Transferred ownership, control, or servicing of policies written with the insurer to another insurer, or to an entity directly or indirectly owned or controlled by an insurer or to an entity directly or indirectly owning or controlling an insurer.

(c) When a broker-agent's contract is terminated as provided by this section, the rights, duties, and obligations set forth in the terminated contract of the broker-agent having property rights in renewals shall continue solely with respect to policies then in force or renewed as provided by this section until those policies are canceled in accordance with law, placed by the broker-agent with another insurer, or have expired. The broker-agent's authority during the period following notice of termination of his or her contract shall be governed by the written contract between the broker-agent and the insurer, except that, after the receipt of the notice of termination, the broker-agent shall not bind new risks on behalf of the insurer, renew policies except as permitted by this section, or otherwise increase the obligation of the insurer, without the express approval of the insurer or in accordance with the terms of an existing policy.

(d) If a terminated broker-agent is unable, after making a good faith effort, to place existing policies with another insurer, the insurer then insuring the risk shall, at the broker-agent's request, renew any insurance contract written by the broker-agent for the insurer for one policy term or a period of one year, whichever is shorter. Where the insurer is prohibited by subdivision (c) of Section 1861.03 from nonrenewing the risk, the insurer shall continue to compensate the broker-agent for servicing the policies written by the insurer prior to termination of the broker-agent relationship until the insurer can cancel or nonrenew the policyholder pursuant to statute or the broker-agent moves the policyholder to another insurer but, in no event, shall the insurer's obligation to compensate the broker-agent exceed three years after termination of the broker-agent's contract, unless otherwise provided by terms of the contract. The renewal shall be at the insurer's premium rates in effect on the date of renewal and at prevailing commission rates for that class or line of business in effect on the date of renewal for broker-agents whose contracts are not terminated. An insurer shall not be precluded from paying a commission to a terminated broker-agent pursuant to this section at a level the insurer is paying at the time it provides notice to the broker-agent that it is terminating the contract or as set forth in the written agreement, providing that there has not been any unilateral change in the commission paid by the insurer within 180 days of the notice of the broker-agent's termination. An insurer shall be allowed to subtract from the three-year time period provided to a broker-agent upon termination, the time period that elapsed during which the broker-agent is involved in a rehabilitation program with an insurer.

(e) (1) Notwithstanding any other provision of this section, no insurer shall be required to renew any policy of insurance or compensate a terminated broker-agent pursuant to the provisions of this section if any of the following apply:

(A) The broker-agent is no longer the broker-agent of record with respect to the policy, or the broker-agent has transferred ownership, control, or servicing of policies written with the insurer to another insurer or an entity owned or controlled, directly or indirectly, by another insurer or to an entity owning or controlling, directly or indirectly, another insurer.

1 (B) The broker-agent has died or has become unable to
2 conduct his or her business affairs.

3 (C) The broker-agent has failed, either within ~~10~~ 20 days after
4 written demand upon failure to remit funds within the time limits
5 set forth in the agency or brokerage contract or within 30 days
6 after written demand if the agency or brokerage contract does not
7 set forth time limits, to remit funds due and owing to the insurer.

8 (D) The broker-agent has failed to follow the written
9 instructions of the insurer, a copy of which has been provided to
10 the broker-agent, generally applicable to the renewal of policies.

11 (E) The commissioner has determined that the renewal of the
12 policy would threaten the solvency of the insurer.

13 (F) The insurer suffers the withdrawal of reinsurance covering
14 all or part of the risk and this withdrawal of reinsurance is likely
15 to threaten, in the opinion of the commissioner, the financial
16 integrity or solvency of the insurer.

17 (G) The insurer has withdrawn from the State of California in
18 accordance with Sections 1070 to 1076, inclusive.

19 (2) Nothing in this subdivision shall be construed to authorize
20 the nonrenewal of a good driver discount policy as defined and
21 issued pursuant to the provisions of Sections 1861.02, 1861.025,
22 and 1861.03.

23 (f) This section shall not apply to a life insurer, an agent of a
24 life insurer, a disability insurer, a nonprofit hospital service plan,
25 an agent of a disability insurer or nonprofit hospital service plan,
26 an agent who is the employee of an insurer, or to an agent who,
27 by contractual agreement either represents only one insurer or
28 group of affiliated insurers or who is required by contract to
29 submit risks to a specified insurer or group of affiliated insurers
30 prior to submitting them to other insurers.

31 (g) This section does not apply to any management contract of
32 a managing general agent as defined in Section 1735, but it shall
33 continue to apply to any agency or brokerage contract of a
34 managing general agent or any portion of a management contract
35 authorizing a managing general agent to act in his or her capacity
36 as an insurance agent as defined in Section 1621, or an insurance
37 broker as defined in Section 1623.

38 (h) (1) For purposes of this section, a “rehabilitation program”
39 shall include, but not be limited to, all of the following:

1 (A) Written communication to the broker-agent outlining the
2 fact that the broker-agent is on rehabilitation status.

3 (B) Identification by the company of problem areas.

4 (C) Mutual agreement on performance objectives and specific
5 dates for accomplishment.

6 (D) Length of rehabilitation plan to be negotiated, but not less
7 than six months.

8 (2) For purposes of subdivision (d), a good faith effort is
9 satisfied by a terminated broker-agent who markets his or her
10 book of business to other insurers that underwrite the same or
11 similar lines of insurance, consistent with the interests of the
12 policyholders. An insurer who terminates a broker-agent shall be
13 entitled to be informed of the marketing activity and to obtain
14 copies of any correspondence reflecting these efforts. However,
15 nothing in this section shall be interpreted to allow the insurer to
16 require the terminated broker-agent to obtain written rejections of
17 an agency appointment from other insurers, or written rejections
18 from individual policyholders.

19 (i) An insurer that takes action, other than terminating the
20 written agency or brokerage contract, solely for the purpose of
21 avoiding the provisions of subdivision (a) shall be required to
22 extend existing policies pursuant to the applicable provision of
23 subdivision (d) if both of the following apply:

24 (1) The action is designed to impact only a specific agency or
25 agencies and the business produced by them.

26 (2) The action results in the cancellation or nonrenewal of
27 substantially all of the agency's or agencies' business.

28 (j) This section shall apply to written agency contracts
29 becoming effective on or after January 1, 1987. The amendments
30 to this section by the act adding this sentence also apply to any
31 written agency contract amended after January 1, 1988.

32 (k) The amendments to this section made by the act adding
33 this subdivision shall apply to any written brokerage contract
34 becoming effective, or amended, on or after January 1, 1996.